

BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED

(Wholly owned by Government of Karnataka undertaking)

**Enquiry No: BESCOM/2024-25/SE0180/Call-2 dated:
05.10.2024**

SECTION-III

GENERAL TERMS & CONDITIONS OF CONTRACT FOR

**Providing Annual Maintenance Services for four numbers of
Juniper firewalls installed at DAS Control Center,
Rajajinagar, Bengaluru for a period of one year**

Issued By

General Manager (DAS)

Corporate office, BESCOM
BESCOM Integrated Control Center-1,
17th cross, 24th Main,
Sector-2, HSR layout
Bangalore-560102

E-mail ID: gmdas@bescom.co.in

Mobile No.:9448279010

Office No.:080-22586356

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A. INTRODUCTION

1. DEFINITION OF TERMS

- a) 'Contract' means the agreement entered into between the Owner and the Contractor as per the Contract Agreement signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- b) 'Owner or Employer or Client' shall mean Bangalore Electricity Supply Company, (BESCOM) and shall include its legal representatives, successors and assigns.
- c) 'Contractor' or 'Manufacturer' or 'Selected Bidder' or 'Service Provider' or 'Firm' shall mean the Bidder whose bid will be accepted by the Owner for the award of the Works and shall include such successful Bidder's legal representatives, successors and permitted assigns.
- d) 'Sub-Contractor' shall mean the person named in the Contract for any part of the Works or any person to whom any part of the Contract has been sublet by the Contractor.
- e) The terms 'Equipment', 'Stores' and 'Materials' shall mean and include equipment, stores and materials to be provided by the Contractor under the Contract.
- f) 'Works' shall mean and include all the activities to be carried out as per the detailed scope of the work.
- g) 'Contract Price' shall mean the lump-sum price quoted by the Contractor in the bid with additions and/or deletions as may be agreed and incorporated in the Detailed Work Award, for the entire scope of the works.
- h) 'Notice of Award of Contract'/ 'Letter of Award'/ 'Detailed work award'/ 'Letter of Intent' shall mean the official notice issued by the Owner notifying the Contractor that his bid has been accepted.
- i) 'Effective Date of Contract' shall mean the date recorded in the Notice of Award of Contract/Letter of Award / Detailed work award from which AMC services shall be commenced by the contractor.

- j) 'Month' shall mean the calendar month. 'Day' or 'Days' unless herein otherwise expressly defined shall mean calendar day or days of 24 hours each. A 'Week' shall mean continuous period of seven (7) days.
- k) 'Writing' shall include any manuscript, type written or printed statement, with signature and/or seal as the case may be.
- l) When the words 'Approved', 'Subject to Approval', 'Satisfactory', 'Equal to', 'Proper', 'Requested', 'As Directed', 'Where Directed', 'When Directed', 'Determined by', 'Accepted', 'Permitted', or words and phrases of like importance are used the approval, judgment, direction etc. is understood to be a function of the Owner/Engineer.
- m) 'Commercial Operation' shall mean the condition of operation in which the complete equipment covered under the Contract is officially declared by the Owner to be available for continuous operation. Such declaration by the Owner, however, shall not relieve or absolve the Contractor of any of his obligations under the Contract.
- n) 'Engineer' or 'Engineer in charge' or 'Nodal Officer' shall mean the Assistant General Manager of DAS/ Deputy General Manager, DAS Section or any other officer appointed by BESCO to act as Engineer from time to time for the purpose of the Contract.
- o) 'Latent Defects' shall mean such defects caused by faulty maintenance, material or work-man-ship which cannot be detected during inspection, testing etc, based on the technology available for carrying out such tests.
- p) Words imparting the singular only shall also include the plural and vice – versa where the context so requires.
- q) Words imparting 'Person' shall include firms, companies, corporations and associations or bodies of individuals, whether incorporated or not.
- r) Terms and expressions not herein defined shall have the same meaning as are assigned to them in the Indian Sale of Goods Act (1930), failing that in the Indian Contract Act (1872) and failing that in the General Clauses Act (1897) including amendments thereof, if any.

- s) The various Acts and Regulations are normally available for sale from the Dept. of Publication, GoI or with leading authorized Government of Indian Book –Sellers.
- t) In addition to the above the following definitions shall also apply:
 - a) 'All equipment and materials' to be supplied shall also mean 'Goods'.
 - b) 'Constructed' shall also mean 'erected and installed'.
 - c) 'Contract Performance Guarantee' shall also mean 'Contract Performance Security'.
- u) 'Control Centre' shall mean and include the BESCOM Integrated Control Centre located at Rajajinagar, Bengaluru.

2. APPLICATION

These General Conditions shall apply to the extent that they are not superseded by provisions in other parts of the Contract.

3. STANDARDS

The services delivered under this Contract shall confirm to the standards mentioned in the Tender Specifications, and, when no applicable standard is mentioned, the authoritative standard appropriate to the maintenance services defined by the OEM of the firewalls, i.e., M/s Juniper Networks for its customers in Service Level Agreement (SLA) shall apply.

4. LANGUAGE AND MEASURES

All documents pertaining to the Contract including specifications, schedules, notices, correspondences, operating and maintenance instructions, drawings or any other writing shall be written in English language. The Metric System of measurement shall be used exclusively in the Contract.

5. CONTRACT DOCUMENTS

The term Contract Documents shall mean and include the following, which shall be deemed to form an integral part of the Contract:

- a) Invitation for Bidders including letter forwarding the Bidding Documents, Instructions to Bidders, General Terms and Conditions of Contract, Annexures / Standard Forms and all other documents.
- b) Contractor's Bid Proposal and the documents attached there to including letters of clarifications there to between the Contractor and the Owner prior to the Award of Contract except to the extent of repugnancy.
- c) All the materials, literature, data and information of any sort given by the Contractor along with his bid, subject to the approval of the Owner.
- d) Letter of Award and any agreed variations of the conditions of the documents, if any.

In the event of any conflict between the above-mentioned documents, the matter shall be referred to the Engineer whose decision shall be considered as final and binding upon the parties.

6. USE OF CONTRACT DOCUMENTS AND INFORMATION

- a) Contractor shall not, without the Owner's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of the Owner in connection therewith, to any person other than a person employed by the Contractor in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for the purpose of such performance.
- b) Contractor shall not, without the Owner's prior written consent, make use of any document or information enumerated in various Contract documents except for the purpose of performing the Contract.
- c) Contractor shall not communicate or use in advertising, publicity, sales releases or in any other medium, photographs or other reproduction of the Works under this Contract, or descriptions of the policies, ACL, configuration or other information pertaining to the

firewalls and DAS system architecture, unless prior written permission has been obtained from the Owner.

- d) Any document, other than the Contract itself, enumerated in various Contract documents shall remain the property of the Owner and shall be returned (in all copies) to the Owner on completion of the Contractor's performance under the Contract if so required by the Owner.

7. CONSTRUCTION OF THE CONTRACT

Notwithstanding anything stated elsewhere in the bid documents, the Contract for providing Annual Maintenance Services for four Juniper firewalls installed at the DAS Control Center, Rajajinagar, Bengaluru, will be treated as a single contract. This contract covers the complete scope of maintenance services for a period of one year.

The Contract shall be construed and governed in all respects by the laws of India

8. JURISDICTION OF CONTRACT

The laws applicable to the Contract shall be the laws in force in India. Courts of Bengaluru City of Karnataka State in India shall have exclusive jurisdiction in all matters arising under this Contract.

9. MANNER OF EXECUTION OF CONTRACT

- a) The Owner, after the issue of the Letter of Intent to the Contractor, will send the format of the contract agreement, non-disclosure agreement to the Contractor for execution. The value of the stamp paper on which the agreements have to be executed will be mentioned in the Letter of Intent
- b) The Agreements, unless otherwise agreed to, shall be signed within 15 (Fifteen) days of issuance Letter of Intent at the office of the Owner on a date and time to be mutually agreed. Contractor shall provide for signing of the Contract, Performance Guarantee, appropriate power of attorney and other requisite materials. In case the Contract is to be

signed beyond the stipulated time, the Bid Guarantee submitted with the Bid Proposal will have to be extended accordingly.

- c) Agreements will be signed in two originals.
- d) Meanwhile the contractor shall submit its Letter of acceptance and Performance Bank Guarantee as per the annexed format with 15 days of date of issue of letter of Intent by the owner.
- e) Subsequent to signing of the Contract, the Contractor at his own Cost shall provide the Owner with Three(03) true Bounded Copies of Contract documents within 15 (Fifteen) days after the signing of the Contract.

10. ENFORCEMENT OF TERMS

The failure of either party to enforce at any time any of the provisions of this Contract or any rights in respect thereto or to exercise any option therein provided, shall in no way be construed to be a waiver of such provisions, rights or options or in anyway to affect the validity of the Contract. The exercise by either party of any of its rights herein shall not preclude or prejudice either party from exercising the same or any other right it may have under the Contract.

11. SERVICE LEVEL AGREEMENT

- a) Successful bidder shall ensure that the firewalls are providing optimal performance throughout the contract period. Given below are the service level requirements for the contract period.

Incident Category	Description	Resolution Time	Penalty
Critical	Critical incidents listed below but not limited to a. Equipment failure – Not responding, CPU Hung, Internal Component Failure, firewall failure, memory overflow, no disk	Within 1 day of incident reporting	0.5% of the quarterly payment value for each week of delay in resolving the critical incident shall be applicable.

	space, etc. b. Failure of High availability solutions including failover to alternate device not working.		
High	High priority incidents listed below but not limited to a. Incidents that impact the availability of the equipment for BESCOM's applications at the control center. b. Adherence to cyber security guidelines issued by statutory bodies by making necessary modifications to the configuration or patch or firmware update on the firewall	Within 5 days of incident reporting	0.5% of the quarterly payment value for each week of delay in resolving the high priority incident shall be applicable.
Non-Critical	Incidents that have no impact on BESCOM's applications / service availability at the control center.	Within 7 days of incident reporting	0.25% of the quarterly payment value for each week of delay in resolving the non-critical incident shall be applicable.

- b) Successful bidder shall submit Quarterly reports of all incidents to BESCOM indicating – Date of Incident, Time of Incident, Incident Type, Description, Incident Status, Date of Resolution, Time of Resolution and other details.

- c) Penalty for breach of SLAs during the contract period shall be deducted from payables to the Contractor as defined in table above for each incident category.
- d) The total penalty that can be applied for each quarter of the contract period is capped at 10% of the quarterly payment due to the contractor.

12. DATA SECURITY

Contractor shall ensure the security of the Employer's data, particularly the critical data related to the Electricity Distribution System. The Contractor is responsible for maintaining and configuring the firewalls to protect against unauthorized access, data breaches, and other security threats. This includes ensuring that all data transmitted through the firewalls is secured using appropriate encryption and that the firewall configurations adhere to the best practices in cybersecurity. Any security incidents or potential vulnerabilities must be reported to the Employer immediately, and the Contractor must take prompt action to address and mitigate any risks.

13. CONTRACTOR'S PERSONNEL AND CONDUCT

Contractor shall engage personnel who have experience of working with Juniper make firewalls to deliver / perform the services under this contract.

If at any time the Project is materially delayed by Contractor and, in the reasonable opinion of BESCOM, any additional, qualified, experienced professionals are considered necessary to provide the services defined in the tender, they shall be deployed by the Contractor without any additional charge, subject to the provisions regarding delay and extension. The Contractor shall ensure competent and efficient supervision of the services to the satisfaction of the BESCOM

Contractor shall be solely responsible for the proper behavior of his employees and staff employed by him/deputed by him to provide the services the Employer. Contractor shall exercise proper degree of control over them and in particular without prejudice to the said generality

Contractor shall be bound to prohibit/prevent any of his employees (as stipulated above) from trespassing or acting in anyway detrimental or prejudicial to the interest of the community or the properties or occupiers of land or properties in the neighborhood. In the event of such trespassing, Contractor shall be responsible for all consequent claims or actions for damages or injury or any other grounds whatsoever. The decision of the BESCOM upon any matter arising under this clause shall be final.

If and required by BESCOM, all Contractor's personnel entering upon the BESCOM's premises shall be properly identified by badges of a type acceptable to the BESCOM which must be worn at all times on the BESCOM's premises.

14. CONTRACTOR'S PROJECT MANAGER

Contractor shall designate a Project Manager for this contract. This Project Manager will be responsible for overseeing and ensuring the performance and compliance of the contract. The Project Manager shall be available at all times during the contract period to address any issues, coordinate maintenance activities, and ensure that the service levels and performance standards are met throughout the contract period.

15. CONTRACT PERIOD

Unless terminated earlier according to the provisions of other relevant clauses, the contract period for providing Annual Maintenance Services for four existing Juniper firewalls installed at DAS Control Center, Rajajinagar, Bengaluru, shall be for one year from the effective date of the contract.

The contractor shall extend the maintenance services upon Employer's request for an additional period of six months on quarterly basis at the same charges defined in the AMC contract. All other terms and conditions for this extended period shall remain the same as defined in the AMC contract.

B. GUARANTEES & LIABILITIES

16. EFFECTIVENESS OF CONTRACT

The Contract shall be considered as having come into force from the date of which the contractor submits a record of having subscribed for annual maintenance support contract from the OEM of the firewall, i.e., M/s Juniper networks or such other date as mentioned in the detailed work award.

17. PERFORMANCE SECURITY

The Contractor shall submit performance bank guarantee as described in clause 31 of ITB.

18. GUARANTEE

The cost of any special or general overhaul rendered necessary during the maintenance period due to defects in the equipment or defective work carried out by the Contractor shall be borne by the Contractor.

19. LIQUIDATED DAMAGES:

- a) In case agency fails to provide the services as stipulated in the Scope of work/work award/Technical Specifications, the Client shall recover from the Contractor as Liquidated Damage (LD) for such default and not as a penalty, without prejudice to the Client's Other remedies under the Contract. For imposition of LD, the loss/ damages suffered by the Client due to delays by the Contractor are the basic criteria.
- b) The recovery towards compensation should take place when loss/damage has actually taken place on account of delay caused by the Contractor. Even if there is a delay in execution of the Contract and reasons for delay are attributable to the Contractor but the Client has not suffered any actual out-of-pocket loss specifically due to delay in performance of the Contract, as evidenced by written documentation setting forth the basis for such loss, no sum as LD is recoverable from the Contractor. However, in such cases, a nominal LD as described in this clause will be recovered.
- c) Calculation of Liquidated Damages: A sum equivalent to half percent (0.5%) of the total price in Price Bid for each week of delay or part thereof which will elapse between the date mentioned in the

notification issued by the owner seeking a service and the actual date on which the contractor has provided that service.

- d) The payment of liquidated damages shall not in any way relieve the Agency/Bidder from any of its obligation and liabilities under the Contract.

20. LIMITATION OF LIABILITY

Except in cases of gross negligence or wilful misconduct:

- a) Neither Party shall be liable to the other Party for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Consultant to pay liquidated damages to BESCO, and
- b) The aggregate liability of the Consultant to BESCO, whether under the Contract, in tort, or otherwise, shall not exceed 20% of the amount specified in the Contract Price.

21. DEFENCE OF SUIT

If any action in court is brought against the Owner or Engineer or an officer or agent of the Owner, for the failure, omission or neglect on the part of the Contractor to perform any acts, matters, covenants or things under the Contract, or for damage or injury caused by the alleged omission or negligence on the part of the Contractor, his agents, representatives or his Sub-Contractors, or in connection with any claim based on lawful demands of Sub-Contractors, workmen, suppliers or employees, the Contractor shall in all such cases indemnify and keep the Owner, and the Engineer and/or his representative, harmless from all losses, damages, expenses or decrees arising of such action.

22. ENGINEER'S DECISION

- a) In respect of all matters which are left to the decision of the Engineer including the granting or with-holding of the certificates, the Engineer shall, if required to do so by the Contractor, give in writing a decision thereon.

- b) If, in the opinion of the Contractor, a decision made by the Engineer is not in accordance with the meaning and intent of the Contract, the Contractor may file with the Engineer, within fifteen (15) days after receipt of the decision, a written objection to the decision. Failure to file an objection within the allotted time will be considered as an acceptance of the Engineer's decision and the decision shall become final and binding.
- c) The Engineer's decision and the filing of the written objection thereto shall be a condition precedent to the right to request arbitration. It is the intent of the Agreement that there shall be no delay in the execution of the works and the decision of the Engineer as rendered shall be promptly observed.

C. PAYMENTS

23. CONTRACT PRICE

Contract price is the total value specified in DWA. The Contractor's total remuneration shall not exceed the Contract Price (except in the event of extension of contract period or any other change requests originating from the Employer) and shall be a fixed lump sum including all staff costs, printing, communications, travel, accommodation, and the like, and all other costs incurred by the Contractor in carrying out the Services described in Scope of Work.

24. TERMS AND CONDITIONS OF PAYMENT

- a) The Contractor shall submit the bill on quarterly basis in triplicate at the office of the undersigned along necessary supporting documents.
- b) The Client shall verify the bill and supporting documents after receipt of bill from the Contractor. The Client shall release the payment after deducting applicable taxes, penalties/liquidated damages and other recoverable. All the payments made by the Client will be in Indian Rupee only. No payment made by the Client herein shall be deemed to constitute acceptance by the Client of the goods or services or any part(s) thereof.
- c) If any excess payment has been made by the Client due to difference in quoted price in the bid and Contractor's invoice, the Client may

without prejudice to its rights recover such amounts by other means after notifying the Contractor or deduct such excess payment from any payment subsequently falling due to the Contractor.

- d) At its own discretion, the Client shall make payments either through crossed bank cheque or electronic bank transfer.
- e) Wherever applicable, tax deduction certificates shall be issued at the end of the month against deduction of statutory taxes
- f) Payment will be arranged by Assistant General Manager (E&S), BESCOM upon submission of invoices by the contractor duly certified by concerned officers at DAS section.
- g) Total penalty shall not exceed 10% of the contract value.
- h) BESCOM reserves the right to forfeit the Performance Bank Guarantee, terminate the contract if the contractor fails more than twice in that specific quarter to provide warranty services as per the SLA.
- i) Any additional financial implication on BESCOM on such account will be at the risk and cost of the bidder to whom the contract is awarded.

25. PENALTY FOR DELAY IN EXECUTION/NON- EXECUTION OF THE WORK

- 1) The contractor shall within one week of issue of detailed work award submit a record of having subscribed for annual maintenance contract for all the four number of juniper firewalls described in the scope of works elsewhere in this technical specification, from the OEM of the firewalls, i.e., M/s Juniper networks. In case of delay in subscribing for support from the OEM, penalty @ ½ % per week will be levied subject to a maximum of 10% of the cost of work awarded.
- 2) If the contractor violates any of the terms and conditions of this agreement or fails to adhere to the Service Level Agreement or commits any fault or their services are not to the entire satisfaction of officer authorized by the General Manager (DAS), BESCOM, a penalty leading to a deduction up to a maximum of 10% of the total amount of bill for a particular quarter shall be imposed.

26. DEDUCTIONS FROM CONTRACT PRICE

All costs, damages or expenses which the Owner may have paid, for which under the Contract the Contractor is liable, will be claimed by the Owner. All such claims shall be billed by the Owner to the Contractor regularly as and when they fall due. Such bills shall be supported by appropriate and certified vouchers or explanations, to enable the Contractor to properly identify such claims. Such claims shall be paid by the Contractor within thirty (30) days of the receipt of the corresponding bills and if not paid by the Contractor within the said period, the Owner may then deduct the amount, from any moneys due or becoming due by him to the Contractor under the Contract or may be recovered by sections of Law or otherwise.

D. RISK DISTRIBUTION**27. INSURANCE**

- a) The Contractor at his cost shall arrange, secure and maintain all insurance as may be pertinent to the Works/equipment/services and obligatory in terms of law to protect his interest and interests of the Owner against all perils. The form and the limit of such insurance as defined herein together with the under-writer in each case shall be acceptable to the Owner. However, irrespective of such acceptance, the responsibility to maintain adequate insurance coverage at all time during the period of Contract shall be of Contractor alone. The Contractor's failure in this regard shall not relieve him of any of his contractual responsibilities and obligations.
- b) Any loss or damage to the equipment during replacement of the equipment/spares or while providing any service as defined in the scope of works of this contract shall be to the account of the Contractor. The Contractor shall be responsible for preference of all claims and make good the damages or loss by way of repairs and/or replacement of the equipment, damaged or lost.

- c) The perils required to be covered under the insurance shall include, but not be limited to fire and allied risks, miscellaneous accidents (erection risks) workman compensation risks, loss or damage in transit, theft, pilferage, riot and strikes and malicious damages, civil commotion, weather conditions, accidents of all kinds, etc. The scope of such insurance shall be adequate to cover the replacement/reinstatement cost of the equipment for all risks up to and including delivery of goods and other costs till the equipment is delivered at Site. The insurance policies to be taken should be on replacement value basis and/or incorporating escalation clause. Notwithstanding the extent of insurance cover and the amount of claim available from the underwriters, the Contractor shall be liable to make good the full replacement/rectification value of all equipment/materials and to ensure their availability as per project requirements.
- d) All costs on account of insurance liabilities covered under the Contract will be on Contractor's account and will be included in Contract Price.

28. INDEMNITY

Contractor shall hold BESCO, and the officers, agents and employees of both institutions harmless and free from any loss, damage or expense arising out of any occurrence relating to this tender or its performance and shall indemnify BESCO and their Regents, officers, employees, customers, agents, successors and assigns against any damage or claim of any type arising from the negligent or intentional acts or omission of the Contractor, its employees, agents and/or assigns.

29. INDEPENDENT CONTRACTOR

- a) Contractor shall be an independent contractor performing the Contract. The Contract does not create any agency, partnership, joint venture or other joint relationship between the parties hereto.
- b) Subject to provisions of the Contract, the Contractor shall be solely responsible for manner in which the Contract is performed. All employees, representatives or Subcontractors engaged by Contractor in connection with the performance of the Contract shall be under the

complete control of the Contractor and shall not be deemed to be employees of BESCOM, and nothing contained in the Contract or in any subcontract awarded by the Contractor shall be construed to create any contractual relationship between any such employees, representatives or Subcontractors and BESCOM.

- c) Contractor acknowledges that it is engaged as an independent contractor and that BESCOM shall have no responsibility to provide the Contractor or its employees with transportation, insurance or other fringe benefits normally associated with employee status. Contractor is responsible for all statutory deductions as applicable in law.
- d) BESCOM and the contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to the terms and conditions of this contract.

30. SUCCESSORS AND ASSIGNS

BESCOM and the Contractor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to the terms and conditions of this tender.

31. LIABILITY FOR ACCIDENTS AND DAMAGES

Under this contract, the Contractor shall be fully responsible for any loss, damage, or accidents that may arise due to the non-observation of safety requirements by its staff while providing maintenance services for the Juniper firewalls at the DAS Control Center as per the scope of work. All demurrage, wharfage and other expenses incurred while delivering the scope of works shall be to the account of the contractor.

The Contractor must ensure that all personnel adhere to the highest safety standards while performing their duties to prevent any incidents that could disrupt operations of the equipment/control center or cause harm to property or personnel.

32. FIRST AID

The Contractor shall ensure that appropriate arrangements are in place to address any emergency or accidental situations that may arise during

the execution of maintenance services for the Juniper firewalls at the DAS Control Center. This includes providing first aid supplies and, if necessary, arranging for immediate transportation to the nearest hospital, such as through the services of an ambulance, at the Contractor's own expense.

33. BANKRUPTCY

If the Contractor shall become bankrupt or otherwise insolvent or have a receiving Order made against or compound with their Creditors, or being a Corporation, commence to be wind up, not being a voluntary winding up for the purpose only of amalgamation/reconstruction, or carry on its business under a receiver for the benefit of its Creditors or any of them, BESCOM will be at liberty to terminate the Contract forthwith by Notice in writing to the Contractor may become vested and BESCOM reserves the right to encash the Contract Performance Bank Guarantee.

34. FORCE MAJEURE

a) Force majeure is herein defined as any cause which is beyond the control of the Contractor or the Owner as the case may be, which they could not foresee or with a reasonable amount of diligence could not have foreseen and which substantially affects the performance of the Contract, such as:

- a. Natural phenomena, including but not limited to floods, droughts, earthquakes and epidemics;
- b. Acts of any Government, domestic or foreign, including but not limited to war, declared or undeclared, priorities, guarantees and embargoes.

Provided either party shall within fifteen (15) days from the occurrence of such a cause notify the other in writing of such causes.

b) The Contractor or the Owner shall not be liable for delays in performing his obligations resulting from any force majeure cause as referred to and/or defined above.

- c) The failure of the Contractor or the Owner to fulfil any of its obligations under the contract shall not be considered to be a breach of, or default under this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event
 - a. has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and
 - b. has informed the other Party as soon as possible about the occurrence of such an event.
- d) Any period within which Contractor or the Owner shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

35. TERMINATION OF CONTRACT

35.1 By the Client

The Client may terminate this Contract, by not less than thirty (30) days' written notice of termination to the Contractor, to be given after the occurrence of any of the events specified in paragraphs (a) through (e) of this Clause 35.1 and sixty (60) days' in the case of the event referred to in (f):

- (a) if the Contractor do not remedy a failure in the performance of their obligations under the Contract, within thirty (30) days of receipt after being notified or within such further period as the Client may have subsequently approved in writing;
- (b) if the Contractor (or any of their Members) become insolvent or bankrupt;
- (c) if, as the result of Force Majeure, the Contractor are unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (d) if the Contractor, in the judgment of the Client has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

For the purpose of this clause:

“corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution.

“fraudulent practice” means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of GOK, and includes collusive practice among Contractor (prior to or after submission of bids) designed to establish prices at artificial non-competitive levels and to deprive GOK of the benefits of free and open competition.

- (e) Any events listed in SC.
- (f) if the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

35.2 By the Contractor

The Contractor may terminate this Contract, by not less than Ninety (90) days written notice to the Client, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (c) of this Clause 35.2:

- (a) if the Client fails to pay any money due to the Contractor pursuant to this Contract and not subject to dispute pursuant to Clause 39 Settlement of Disputes hereof within forty-five (45) days after receiving written notice from the Contractor that such payment is overdue;
- (b) If the Client is in material breach of its obligations pursuant to this Contract and has not remedied the same within in forty-five (45) days (or such longer period as the Contractor may have subsequently approved in writing) following the receipt by the Client of the Contractor’ notice specifying such breach;

- (c) if, as the result of Force Majeure, the Contractor are unable to perform a material portion of the Services for a period of not less than sixty (60) days.

35.3 Cessation of Rights and Obligations

Upon termination of this Contract pursuant to Clause GC 35, or upon expiration of this Contract pursuant to completion of the contract period defined in Clause GC 15, all rights and obligations of the Parties hereunder shall cease, except:

- i. such rights and obligations as may have accrued on the date of termination or expiration;
- ii. the obligation of confidentiality set forth in Clause GC 38 hereof;
- iii. any right which a Party may have under the Applicable Law.

35.4 Cessation of Services

Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GC 35.1 or GC 35.2 hereof, the Contractor shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Contractor and equipment and materials furnished by the Client, All plans, drawings, specifications, designs, reports, equipment, proprietary spares, etc and other documents and software submitted by the Contractor shall become and remain the property of the Client, and the Contractor shall, not later than upon termination or expiration of this Contract, deliver all such documents, hardware and software to the Client, together with a detailed inventory thereof.

35.5 Payment upon Termination

Upon termination of this Contract pursuant to Clauses 35.1 or 35.2, the Client shall make the following payments to the Contractor:

- i. Payments for Services satisfactorily performed prior to the effective date of termination;
- ii. except in the case of termination pursuant to paragraphs (a) and (b) of Clause 35.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract.

36. FRUSTRATION OF CONTRACT

- a) In the event of frustration of the Contract because of supervening impossibility in terms of Section 56 of the Indian Contract Act, parties shall be absolved of their responsibility to perform the balance portion of the Contract, subject to provisions contained in sub-clause 36 (c).
- b) In the event of non-availability or suspension of funds for any reasons, whatsoever (except for reason of willful or flagrant breach by the Owner) and/or Contractor then the works under the Contract shall be suspended.
- c) Furthermore, if the Owner is unable to make satisfactory alternative arrangements for financing to the Contractor in accordance with the terms of the Contract within three months of the event, the parties hereto shall be relieved from carrying out further obligations under the Contract treating it as frustration of the Contract.
- d) In the event referred to in sub-clauses 36 (a) & 36 (b), the parties shall mutually discuss to arrive at reasonable settlement on all issues including amounts due to either party for the work already done on "Quantum merit" basis, which shall be determined by mutual agreement between the parties.

37. GRAFTS AND COMMISSIONS ETC.

Any graft, commission, gift or advantage given, promised or offered by or on behalf of the Contractor or his partner(s), agent(s), officer(s), director(s), employee(s) or servant(s) or any one on his or their behalf in relation to the obtaining or to the execution of this or any other Contract with the Owner, shall in addition to any criminal liability which it may incur, subject the Contractor to the cancellation of this and all other

Contracts and also to payment of any loss or damage to the Owner resulting from any cancellation. The Owner shall then be entitled to deduct the amount so payable from any monies otherwise due to Contractor under the Contract.

38. CONFIDENTIALITY

The Contractor, their Sub-Contractor, and the Personnel of either of them shall not, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Client's business or operations without the prior written consent of the Client. A Non-Disclosure agreement as per prevailing data sharing policy of BESCOM shall be executed between the Client and Contractor before signing of contract and any information is shared.

E. RESOLUTION OF DISPUTES

39. LAW, JURISDICTION, DISPUTES RESOLUTION AND ARBITRATION

- a) A Party claiming that a Dispute has arisen under this Agreement must give the other Party a written notice of the particulars of the Dispute.
- b) Any dispute(s) or difference(s) arising out of or in connection with the Contract shall, to the extent possible, be settled amicably between the Parties.
- c) If the party fails to resolve such a dispute or difference by mutual consultation within thirty (30) days from the commencement of such dispute and difference, either party may require that the dispute be referred to arbitration under the Arbitration and Conciliation Act, 1996 (Indian) and subsequent Amendments made thereon, to be adjudicated by a sole arbitrator to be appointed by mutual agreement of both the parties and the award of the arbitrator shall be final and conclusive and binding upon both the Parties. (The date of commencement of the dispute shall be taken from the date when this clause reference is quoted by either party in a formal communication clearly mentioning existence of dispute or as mutually agreed).

- d) The place of arbitration shall be in Bangalore. The arbitral procedure shall be conducted in English language.
- e) The cost of arbitration including the fees of arbitrator shall be borne by both the parties equally.
- f) During the settlement of disputes and Arbitration proceedings, both parties shall be obliged to carry out their respective obligations under the contract.
- g) The award of the arbitrator shall be final and conclusive and binding upon the parties.
- h) The courts of Bangalore only shall have the exclusive jurisdiction to deal with any issues arising out of this Agreement.

40. GENERAL TERMS AND CONDITIONS

- a) Contractor shall not assign or transfer the Contract or any right or interest therein in violation of the provision of this tender.
- b) Any dispute arising between the contractor and its sub-contractors has to be resolved with mutual consultation and BESCO will not be liable for such disputes.
- c) Any other incidental works which are not specifically mentioned in this document and are essentially required for providing the services defined in the scope of work shall be taken up by the contractor, at no additional cost to BESCO.

Sd/-
General Manager,
DAS & SG, BESCO.